IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 26453 of 2006(Y)

PETITIONER:

J.G.JOLSNA, AGED 35 YEARS,
W/O.ANIL KUMAR, SANTHI NIVAS,
MANTROTHURUTH P.O., KOLLAM.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
SRI.P.R.MILTON

RESPONDENTS:

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1. JOINT REGISTRAR (GENERAL) OF
CO-OP.SOCIETIES, KOLLAM.

2. THE REGISTRAR OF CO-OP.SOCIETIES,
TRIVANDRUM.

3. THE KOLLAM DISTRICT CO-OP.BANK LTD.,
HEAD OFFICE, KOLLAM.

BY ADV. SRI.P.B.SURESHKUMAR, SC, KOLLAM DC BANK
SPECIAL GOVERNMENT PLEADER SMT. P.A. ANEETHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS”-

EXT.P1- TRUE COPY OF BYE LAW OF THE KUNNIKKODE CONTRACT SOCIETY.

EXT.P2- TRUE COPY OF THE MINUTES OF THE GENERAL BODY MEETING OF THE KUNNIKKODE LABOUR CONTRACT SOCIETY.

EXT.P3- TRUE COPY of THE ORDER APPOINTMENT OF ADMINISTRATOR DATED 18.9.2006 ISSUED TO THE KUNNIKKODE LABOUR CONTRACT SOCIETY.

EXT.P4- TRUE COPY OF THE LETTER DATED 20.9.06 ISSUED BY THE FIRST RESPONDENT TO THIRD RESPONDENT.

EXT.P5- TRUE COPY OF THE LETTER DATED 29.9.2006 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P6- TRUE COPIES OF MINUTES OF COMMITTEE MEETINGS HELD ON VARIOUS DATED BETWEEN 10.10.2001 TO 28.12.2002.

RESPONDENT'S EXHIBITS:-

EXT.R1(a)- TRUE COPY OF THE REGISTER OF BYE LAW AMENDMENTS KEPT BY THE RESPONDENT IN HIS OFFICE.

EXT.R1(b)- TRUE COPY OF THE TAPAL REGISTER FROM 9.1 TO 10.1 IN THE OFFICE OF THE ASST.REGISTRAR PUNALUR.

EXT.R1(c)- TRUE COPY OF THE LETTER NO.1225/02 DATED 22.1.2003 FROM THE ASST. REGISTRAR, PUNALUR RECOMMENDING TO APPOINT ADMINISTRATIVE COMMITTEE CONSISTING OF THREE MEMBERS IN THE SOCIETY IN ORDER TO AVOID ADMINISTRATIVE STALEMATE PREVAILING FROM 5/2000

EXT.R1(d)- TRUE COPY OF THE ORDER NO.H.M.665/03 DATED 30.1.2003 APPOINTING ADMINISTRATIVE COMMITTEE IN THE PETITIONER'S SOCIETY.

EXT.R1(e)- TRUE COPY OF THE PAGE NOS.3 AND 4 OF THE MINUTES BOOK TO SHOW THAT THE ADMINISTRATIVE COMMITTEE TOOK CHARGE ON 31.10.2003.

(TRUE COPY)

P.A. TO JUDGE

J.M.JAMES, J.

W.P.(C). 26453/2006

Dated this 22nd day of November, 2006

JUDGMENT

A part-time administrator was appointed under Section 33(1) of the Kerala Co-operative Societies Act, 1969, in short 'the Act', for the administration of Kunnikkode Labour Contract Co-operative Society No.Q 1225, in short 'the Society', as the term of the then existing managing committee expired on 6.4.2006, and the new committee was not constituted, through Ext.P3 order dated 18.9.2006, basing on the report of Assistant Registrar (General), Punalur. The writ petitioner, one of the managing committee members of the society, challenges Ext.P3 order. Ext.P4 is another communication dated 20.9.2006, in which elected representatives of the society to the District Co-operative Bank will be debarred from continuing with the membership of the District Bank. Hence the prayer for quashing Exts.P3 and P4.

2. The main contention of the learned counsel for the writ petitioner is that under Section 33(1) of the Act, notice ought to have been given to the Society and hence the first respondent had acted arbitrarily. No discussion is seen made by the first respondent, for not issuing the notice. The counsel relied on Antony Jerome v. Joint Registrar (1990 (2) KLT 895) to emphasis the said point. The counsel further contended that, had the notice been issued, the writ petitioner ought to have brought to the notice of the first respondent, regarding the amendment of the bye-laws, extending the term of the committee from three years to five years and, therefore, the writ petitioner is very much prejudiced because of the passing of Ext.P3 order.

3. The learned Special Government Pleader submitted that there is no material to show that the society had amended its bye-laws and sent the same for registration. The application of Section 12 of the Act and rule 9 of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules' were also brought to my notice.

4. In Ext.P3 order, the first respondent had stated that publishing of the notice under Section 33(1) of the Act, is fully impracticable and he is satisfied of the same. Therefore, without publishing such a notice, he had passed an order of appointing a part-time administrator, to hold the office of administration for a period of six months within which period, he would conduct the election to the managing committee and hand over the administration to that committee.

5. The learned counsel for the writ petitioner brought to my notice Ext.P2, the minuts of the society dated 30.8.2001, wherein the term of the committee, had been amended and increased from three years to five years. Rule 9 of the Rules lays down the procedure regarding the amendment of bye-laws. There should be two third of the majority of the members present and voting, to make an amendment of the by-laws of the society. The resolution, so passed by the Society, shall be forwarded to the Registrar within one month from the date of the General Body meeting, which proposed the

amendment.

6. Rule 9(i)(iii) further make it clear that every application made to the Registrar for registration of amendment shall be signed by the Secretary and two members of the committee and shall contain the details and particulars stated therein. There is no material before me to show that such an application had been made before the Registrar, as laid down under Rule 9(1)(iii) of the Rules.

7. Section 12(1) of the Act make it imperative that an amendment of the bye-laws of the society shall be valid only when the said amendment had been registered under this Act. Section 12(3) of the Act further lays down that “the Registrar shall forward to the society, a copy of the registered amendment together with a certificate of registration signed and sealed by him, and such certificate shall be conclusive evidence that the amendment had been duly registered”.

8. In case the Registrar refuses to register the amendment of the bye-laws of the society, he shall

inform the society within seven days of the order of such refusal. Section 4A of the Act state that "an application to register an amendment of the bye-laws of a society shall be disposed of by the Registrar, within ninety days from the date of receipt of the same". If such refusal does not take place, under Section 4B, an application can be made before the Government and within sixteen days from the date of such representation, the Government shall issue directions to the authority concerned, to dispose of the said representation.

9. In the case at hand, I do not find any material having produced by the writ petitioner, to show any such amendment took place. The term of the office of the committee expired on 6.4.2006. Ext.P3 order was passed on 18.9.2006. The part-time administrator is in the control of the administration of the society from 19.9.2006, the date on which he took charge.

10. In the above facts situation, I find that there is no scope to interfere with the Ext.P3 order and the communication under Ext.P4 dated 20.9.2006. Thus,

the prayer for quashing Exts.P3 and P4 is without any merit.

11. However, I make it clear that for instilling confidence in the minds of the members of the society and also give an earliest opportunity to the members to elect their representatives, although the period of the administrator is for six months, the part-time administrator shall take steps to conduct elections as per the procedure and it shall be completed, in any case, within the six months period, commencing from 19.9.2006.

12. The interim stay, granted by this Court and extended from time to time, is hereby vacated.

The writ petition is disposed of as above.

J.M.JAMES
JUDGE

mrcs